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**SENATE BILL 157**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Dede Feldman**

**AN ACT**

**RELATING TO SUBDIVISIONS; PROVIDING FOR EXEMPT SUBDIVISIONS;  
PROVIDING FOR MERGER OF PARCELS UNDER CERTAIN CIRCUMSTANCES;  
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,  
Chapter 348, Section 2, as amended) is amended to read:**

**"47-6-2. DEFINITIONS. --As used in the New Mexico  
Subdivision Act:**

**A. "immediate family member" means a husband,  
wife, father, stepfather, mother, stepmother, brother,  
stepbrother, sister, stepsister, son, stepson, daughter,  
stepdaughter, grandson, stepgrandson, granddaughter,  
stepgranddaughter, nephew and niece, whether related by  
[natural] birth or adoption;**

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1 B. "lease" means to lease or offer to lease land;

2 C. "parcel" means land capable of being described  
3 by location and boundaries and not dedicated for public or  
4 common use;

5 D. "person" means [~~any~~] an individual, estate,  
6 trust, receiver, cooperative association, club, corporation,  
7 company, firm, partnership, joint venture, syndicate or  
8 [~~other~~] similar entity;

9 E. "final plat" means a map, chart, survey, plan  
10 or replat certified by a licensed, registered land surveyor  
11 containing a description of the [~~subdivided land~~] subdivision  
12 with ties to permanent monuments prepared in a form suitable  
13 for filing of record;

14 F. "preliminary plat" means a map of a proposed  
15 subdivision showing the character and proposed layout of the  
16 subdivision and the existing conditions in and around it and  
17 need not be based upon an accurate and detailed survey of the  
18 land;

19 G. "sell" means to sell or offer to sell land;

20 H. "subdivide" means to divide a surface area of  
21 land into [~~a subdivision~~] two or more parcels;

22 I. "subdivider" means any person who creates or  
23 who has created a subdivision individually or as part of a  
24 common promotional plan or [~~any~~] a person engaged in the sale,  
25 lease or other conveyance of subdivided land; however,

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1 "subdivider" does not include ~~[any]~~ a duly licensed real  
2 estate broker or salesperson acting on another's account;

3 J. "subdivision" means the division of a surface  
4 area of land, including land within a previously approved  
5 subdivision, into two or more parcels for the purpose of sale,  
6 lease or other conveyance or for building development, whether  
7 immediate or future; but "subdivision" does not include:

8 ~~[(1) the sale, lease or other conveyance of~~  
9 ~~any parcel that is thirty-five acres or larger in size within~~  
10 ~~any twelve-month period, provided that the land has been used~~  
11 ~~primarily and continuously for agricultural purposes, in~~  
12 ~~accordance with Section 7-36-20 NMSA 1978, for the preceding~~  
13 ~~three years;~~

14 ~~(2)]~~ (1) the sale or lease of apartments,  
15 offices, stores or similar space within a building;

16 ~~[(3)]~~ (2) the division of land within the  
17 boundaries of a municipality; or

18 ~~[(4) the division of land in which only gas,~~  
19 ~~oil, mineral or water rights are severed from the surface~~  
20 ~~ownership of the land;~~

21 ~~(5) the division of land created by court~~  
22 ~~order where the order creates no more than one parcel per~~  
23 ~~party;~~

24 ~~(6) the division of land for grazing or~~  
25 ~~farming activities; provided the land continues to be used for~~

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1 ~~grazing or farming activities;~~

2 ~~(7) the division of land resulting only in~~  
3 ~~the alteration of parcel boundaries where parcels are altered~~  
4 ~~for the purpose of increasing or reducing the size of~~  
5 ~~contiguous parcels and where the number of parcels is not~~  
6 ~~increased;~~

7 ~~(8)]~~ (3) the division of land to create  
8 burial plots in a cemetery;

9 [~~(9) the division of land to create a parcel~~  
10 ~~that is sold or donated as a gift to an immediate family~~  
11 ~~member; however, this exception shall be limited to allow the~~  
12 ~~seller or donor to sell or give no more than one parcel per~~  
13 ~~tract of land per immediate family member;~~

14 ~~(10) the division of land created to provide~~  
15 ~~security for mortgages, liens or deeds of trust; provided that~~  
16 ~~the division of land is not the result of a seller-financed~~  
17 ~~transaction;~~

18 ~~(11) the sale, lease or other conveyance of~~  
19 ~~land that creates no parcel smaller than one hundred forty~~  
20 ~~acres;~~

21 ~~(12) the division of land to create a parcel~~  
22 ~~that is donated to any trust or nonprofit corporation granted~~  
23 ~~an exemption from federal income tax, as described in Section~~  
24 ~~501 (c) (3) of the United States Internal Revenue Code of 1986,~~  
25 ~~as amended; school, college or other institution with a~~

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1 ~~defined curriculum and a student body and faculty that~~  
2 ~~conducts classes on a regular basis; or to any church or group~~  
3 ~~organized for the purpose of divine worship, religious~~  
4 ~~teaching or other specifically religious activity; or~~

5 ~~(13) the sale, lease or other conveyance of a~~  
6 ~~single parcel from a tract of land, except from a tract within~~  
7 ~~a previously approved subdivision, within any five-year~~  
8 ~~period; provided that a second or subsequent sale, lease or~~  
9 ~~other conveyance from the same tract of land within five years~~  
10 ~~of the first sale, lease or other conveyance shall be subject~~  
11 ~~to the provisions of the New Mexico Subdivision Act; provided~~  
12 ~~further that a survey shall be filed with the county clerk~~  
13 ~~indicating the five-year holding period for both the original~~  
14 ~~tract and the newly created tract;]~~

15 K. "terrain management" means the control of  
16 floods, drainage and erosion and measures required for  
17 adapting proposed development to existing soil characteristics  
18 and topography;

19 L. "time of purchase, lease or other conveyance"  
20 means the time of signing ~~[any]~~ a document obligating the  
21 person signing the document to purchase, lease or otherwise  
22 acquire a legal interest in land;

23 M. "common promotional plan" means ~~[any]~~ a plan or  
24 scheme of operation, undertaken by a single subdivider or a  
25 group of subdividers acting in concert, to offer for sale or

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1 lease parcels of land where [~~such~~] the land is either  
2 contiguous or part of the same area of land or is known,  
3 designated or advertised as a common unit or by a common name;

4 N. "type-one subdivision" means [~~any~~] a  
5 subdivision containing five hundred or more parcels, any one  
6 of which is less than ten acres in size;

7 O. "type-two subdivision" means [~~any~~] a  
8 subdivision containing not fewer than twenty-five but not more  
9 than four hundred ninety-nine parcels, any one of which is  
10 less than ten acres in size;

11 P. "type-three subdivision" means [~~any~~] a  
12 subdivision containing not more than twenty-four parcels, any  
13 one of which is less than ten acres in size;

14 Q. "type-four subdivision" means [~~any~~] a  
15 subdivision containing twenty-five or more parcels, each of  
16 which is ten acres or more in size; and

17 R. "type-five subdivision" means [~~any~~] a  
18 subdivision containing not more than twenty-four parcels, each  
19 of which is ten acres or more in size.

20 Section 2. A new section of the New Mexico Subdivision  
21 Act is enacted to read:

22 "[NEW MATERIAL] EXEMPT SUBDIVISIONS. --

23 A. The following may be exempt from county  
24 subdivision regulations:

25 (1) the sale, lease or other conveyance of

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1 any parcel that is thirty-five acres or larger in size within  
2 any twelve-month period, provided that the land has been used  
3 primarily and continuously for agricultural purposes in  
4 accordance with Section 7-36-20 NMSA 1978 for the preceding  
5 three years;

6 (2) the division of land in which only gas,  
7 oil, mineral or water rights are severed from the surface  
8 ownership of the land;

9 (3) the division of land created by court  
10 order where the order creates no more than one parcel per  
11 party;

12 (4) the division of land for grazing or  
13 farming activities if the land will continue to be used for  
14 grazing or farming activities;

15 (5) the division of land resulting only in  
16 the alteration of parcel boundaries where parcels are altered  
17 for the purpose of increasing or reducing the size of  
18 contiguous parcels and where the number of parcels is not  
19 increased;

20 (6) the division of land to create a parcel  
21 that is sold or donated as a gift to an immediate family  
22 member; however, this exception shall be limited to allow the  
23 seller or donor to sell or give no more than one parcel per  
24 tract of land per immediate family member;

25 (7) the division of land created to provide

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1 security for mortgages, liens or deeds of trust; provided that  
2 the division of land is not the result of a seller-financed  
3 transaction;

4 (8) the sale, lease or other conveyance of  
5 land that creates no parcel smaller than one hundred forty  
6 acres; and

7 (9) the division of land to create a parcel  
8 that is donated to a trust or nonprofit corporation granted an  
9 exemption from federal income tax, as described in Section  
10 501(c)(3) of the Internal Revenue Code of 1986; to a school,  
11 college or other institution with a defined curriculum and a  
12 student body and faculty that conducts classes on a regular  
13 basis; or to a church or group organized for the purpose of  
14 divine worship, religious teaching or other specifically  
15 religious activity.

16 B. A person who is seeking an exemption from the  
17 requirements of the county's subdivision regulations shall  
18 submit to the county:

19 (1) a certificate of survey or, where a  
20 survey is not required, an instrument of conveyance; and

21 (2) evidence of and an affidavit affirming  
22 entitlement to the claimed exemption.

23 C. The board of county commissions shall issue a  
24 certificate of exemption if the proposed subdivision qualifies  
25 as an exempt subdivision pursuant to this section and the



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1 county subdivision regulations and is in compliance with all  
2 applicable state and county land use regulations.

3 D. A certificate of exemption shall not be issued  
4 if:

5 (1) the proposed subdivision does not qualify  
6 under this section; or

7 (2) the proposed subdivision does not  
8 otherwise comply with or is inconsistent with the applicable  
9 comprehensive plan or land use regulations of the county.

10 E. Any party who may be aggrieved by a decision of  
11 the board of county commissioners pursuant to this section may  
12 appeal to the district court as provided in Section 47-6-15  
13 NMSA 1978. "

14 Section 3. A new section of the New Mexico Subdivision  
15 Act is enacted to read:

16 "[NEW MATERIAL] MERGER OF PARCELS. --

17 A. Two or more contiguous parcels shall not be  
18 merged solely by virtue of the fact that the contiguous  
19 parcels are owned by the same person.

20 B. A county may provide in its subdivision  
21 regulations for the merger of contiguous parcels owned by the  
22 same person if any one of the contiguous parcels does not  
23 conform to standards for minimum parcel size as provided in  
24 the subdivision regulations and if one or more of the  
25 following conditions exist for one of the parcels:

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1 (1) it comprises less than five thousand  
2 square feet in area at the time of the determination of  
3 merger;

4 (2) it was not created in compliance with  
5 applicable laws and ordinances in effect at the time of its  
6 creation;

7 (3) it does not meet current standards for  
8 sewage disposal and domestic water supply;

9 (4) it does not meet slope stability  
10 standards;

11 (5) it has no legal access that is adequate  
12 for vehicular access;

13 (6) its development would create health or  
14 safety hazards; or

15 (7) it does not meet zoning requirements or  
16 is otherwise inconsistent with the county's comprehensive plan  
17 or subdivision regulations.

18 C. A merger of parcels becomes effective when the  
19 county files for record with the county clerk a notice of  
20 merger specifying the names of the current record owner and  
21 particularly describing the real property merged.

22 D. Prior to recording a notice of merger, the  
23 county shall mail by certified mail to the current record  
24 owner of the property a notice of intent to merge parcels and  
25 the grounds on which the proposed merger will be taken. The

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1 notice of intent to merge shall include notification of the  
2 property owner's right to request a hearing on the proposed  
3 merger within thirty days of issuance of the notice. The  
4 notice shall be filed with the county clerk in accordance with  
5 the provisions of Chapter 14, Article 9 NMSA 1978 and shall be  
6 published as a legal notice at least twice in a newspaper of  
7 general circulation in the county.

8 E. If the property owner requests a hearing, the  
9 county shall set a date, time and place for the hearing to be  
10 conducted by the board of county commissioners or the planning  
11 commission, and shall notify the property owner by certified  
12 mail. The hearing shall be conducted no more than sixty days  
13 following receipt of the property owner's request for hearing,  
14 but may be postponed or continued with the mutual consent of  
15 the county and the property owner.

16 F. At the hearing, the property owner shall be  
17 given the opportunity to present evidence that the property  
18 does not meet the standards and conditions for merger  
19 specified in Subsection B of this section. At the conclusion  
20 of the hearing, the board of county commissioners or the  
21 planning commission shall make a determination whether the  
22 affected parcels are to be merged and shall notify the  
23 property owner in writing of its determination. A  
24 determination of merger shall be recorded with the county  
25 clerk in accordance with Chapter 14, Article 9 NMSA 1978

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1 within thirty days of the conclusion of the hearing.

2 G. If the board of county commissioners or the  
3 planning commission determines that the property should not be  
4 merged, it shall file with the county clerk a release of  
5 notice of intent to merge and shall mail a clearance letter to  
6 the property owner.

7 H. A property owner who may be aggrieved by a  
8 decision of the planning commission pursuant to this section  
9 may appeal to the board of county commissioners. A property  
10 owner who may be aggrieved by a decision of the board of  
11 county commissioners pursuant to this section may appeal to  
12 the district court as provided in Section 47-6-15 NMSA 1978. "